COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion commencing a rulemaking pursuant to 220 C.M.R. §§ 2.00 et seq., revising the billing procedures for calculating a residential rental property owner's responsibility in non-minimal use sanitary code violations, as set forth in 220 C.M.R. §§ 29.00 et seq.	D.T.E. 01-21

INITIAL COMMENTS OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY, AND NSTAR GAS COMPANY

I. INTRODUCTION

Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, and NSTAR Gas Company (collectively, the "NSTAR Companies") file these comments in response to the Rulemaking Order issued by the Department of Telecommunications and Energy (the "Department") on May 25, 2001, opening a rulemaking for the purpose of revising billing procedures to be implemented by electric and gas companies when billing a residential rental property cited for violations of the State Sanitary Code (the "Code") pertaining to the commingling of electric or gas utility service.[1] Specifically, the Department proposes to revise Section 29.07(2) of its regulations to provide that, in the circumstance of a Code violation for non-minimal electric or gas use, a utility company apportions the bill between the property owner and the tenant for the retroactive period of the Code violation. Rulemaking Order at 5. In its Rulemaking Order, the Department requests comments on (i) the feasibility and potential means of determining electric and gas usage of appliances, outlets, or other energy consumption sources that are the subject of Code violations, and (ii) the method of calculating the cost of that usage to be billed to the property owner under Section 29. Id. at 9.

[1] See 105 C.M.R. §§ 410.254 and 410.354.

The following comments respond to the Department's request regarding the feasibility and method of calculating the cost of usage to be apportioned between the property owner and the tenant pertaining to a Code violation. In these comments the NSTAR Companies recommend that the Department make not change to the full cost assessment to property owners for non-minimal use Code violations, or, in the alternative, establish a "medium use" category of Code violation under which the full usage subject to the Code violation would be billed to the property owner. Also, the NSTAR Companies recommend that the Department change billing and credit payment escrow rules to allow a reasonable time for all appeals and adjudicatory decisions to be finalized before any adjustments between tenants and landlords are considered final. Finally, the NSTAR Companies recommend that the Department confer with the Department of Public Health in developing a standard form for Code violations under 105 C.M.R. §§ 410.254 and 410.354 to be used by local boards of health in issuing Code citations.

II. BACKGROUND

The Department's regulations at 220 C.M.R. §§ 29.00 et seq. establish procedures for electric and gas companies to bill owners of residential rental property for utility service billed to tenant customers where a Certifying Agency has issued a citation of a violation of the Code for co-mingling of electric or gas service. 220 C.M.R. § 29.01. When a utility company receives a copy of a Code violation, the company, among other things, determines whether the violation involves minimal or non-minimal use of utility service. 220 C.M.R. § 29.06(1)(a). Minimal usage is associated with interior and/or exterior common area illumination (excluding exterior flood lights), smoke, fire and/or security alarms, door bells, cooking range, and common area electrical outlets; provided that the Code violation does not also include wrongful connection of heating, air conditioning, hot water heating, electric pumps, clothes dryer, refrigerator, or freezer. 220 C.M.R. § 29.08(1). Where there is a minimal use Code violation, the utility company bills the property owner $10.00 per month for the retroactive period of the Code violation. In instances of non-minimal use Code violation, the utility company bills the property owner for the full electric or gas usage in the tenant dwelling unit for a

retroactive period up to two years from the date of the Code citation. 220 C.M.R. § 29.07(1) and (2).

III. DEPARTMENT'S PROPOSED REGULATIONS

In its Rulemaking Order, the Department proposes to revise Section 29.07 regarding the calculation of the amount or a residential rental property owner's responsibility in non-minimal use Code violations. Rulemaking Order at 4. Specifically, the Department proposes that the utility apportion the bill for the retroactive period of the Code violation, with the property owner responsible only for the usage attributable to the wrongfully connected appliances, etc., rather than the full cost of the tenant's electric or gas usage for the retroactive period. Id. Under the Department's proposed regulations, the utility company would base its apportionment of the bill on industry standards for energy consumption, typical usage patterns, an analysis of billing patterns, or other reasonable method developed by the utility company. Id. at 6.

IV. NSTAR COMPANIES COMMENTS ON PROPOSED REGULATIONS

The NSTAR Companies are concerned that the Department's proposal for an apportionment of the bill in circumstances of a non-minimal use Code violation will place an undue burden on the utility to calculate the apportioned costs and will lead to an extended adjudicatory process involving disputes over this calculation. The Department's proposal for apportionment by the utility would involve substantial analysis and investigation by utilities into such factors as types of appliances in use, usage patterns, square footage, appliance efficiency ratings, and degree-days. The NSTAR Companies do not believe that such effort by utilities is warranted for Code violations, where the dispute involves the property owner, the tenant, and the local board of health - and not the utility. The utility's involvement should be a simple calculation of an amount to be billed to the property owner. The Department's proposal would not make this a simple calculation, and it may lead to extended administrative process before the Department, as the property owner or tenant dispute the basis for the calculation. Accordingly, the NSTAR Companies recommend that the Department not change its

regulations to provide for an apportionment of utility costs for non-minimal use Code violations.

In the alternative, if the Department believes that some billing apportionment is necessary for non-minimal use Code violations, the NSTAR Companies propose: (i) that the Department establish a "medium use" standard under which the property owner would be billed for the full cost of electricity used by an improperly connected appliance, where the improper usage comprised 70 percent or more of the tenant's total electric or gas usage; and (ii) that the Department establish consistent consumption standards to be used in apportioning bills between the property owner and the tenant. Under this "medium use" standard, if the Code violation involved usage of 70 percent or more of the tenant's total use, the property owner would be responsible for the tenant's full use for the retroactive period. If the wrongfully connected appliances used less than 70 percent of a tenant's use, then the NSTAR Companies recommend that the billing apportionment be based on the usage of those appliances. The NSTAR Companies believe one way to make this apportionment consistent and fair throughout the state is for the Department to establish statewide standards for appliance usage. Such standards would afford an objective measure for utilities to calculate any necessary billing adjustment. There are appliance usage standards developed by energy efficiency program assessment groups that could provide one useful source of these measures. Requiring each utility to develop its own means for determining an apportionment may, again, lead to extended administrative process before the Department, as the property owner or tenant dispute appliance usage.

The NSTAR Companies believe that in Code violations cases the utilities should be in the position of a disinterested stakeholder, simply calculating a billing adjustment between the property owner and the tenant. The utilities should not be embroiled in litigation involving the Code violation. The NSTAR Companies are concerned that the Department's proposal will open utilities to unnecessary adjudication of the computation of the billing adjustment. Therefore, the NSTAR Companies recommend against adoption of the Department's proposal. However, if the Department determines that some apportionment is required, the Department should takes steps to alleviate some of the administrative placed on the utility and to avoid some measure of added litigation by

(i) retaining level of "full cost" responsibility for the property owners and (ii) establishing statewide standards for appliance usage.

In a matter related to Code violations, but not specifically stated in the objective of this investigation, the NSTAR Companies would like to recommend changes to the billing and payment correction transactions that accompany sanitary code violation citations. Currently, if a property owner requests a hearing to appeal a sanitary code violation billing, the accompanying financial transactions are suspended pending the outcome of the appeal. This results in a delay of any refunds due to the tenant, and uncertainty about the tenant possibly being re-billed if the property owner prevails in the appeal. The NSTAR Companies recommend that the Department conduct sanitary code hearings and issue a final written decision within 120 days of the property owner's request for a hearing.

In a matter also related to Code violations, but not governed by the Department's regulations, the NSTAR Companies recommend that the Department work with the Massachusetts Department of Public Health to develop a standard citation for a Code violation pertaining to the commingling of electric or gas utility service. The use of a standard citation form would eliminate some of the time required by a utility to determine such factors as the section of the Code at issue, the type of appliance involved, the time period of the violation, confirmation of the tenant and property owners involved in the issue, and appeal rights. In some circumstances, the utility must communicate several times with the local board of health in order to ascertain the specifics of the violation at issue. The use of a standard citation form may also work to avoid confusion by the property owner regarding the Code violation. It also may reduce the workload of the Department in handling appeals based on citations that are not correct and complete.

III. CONCLUSION

The NSTAR Companies appreciate the opportunity to offer their comments in this proceeding. As discussed above, the NSTAR Companies believe that utilities' involvement in Code violation cases should be limited to a basic calculation of a billing adjustment. To avoid placing an undue burden on utilities in analyzing customer usage patterns and appliance usage levels, the Department should retain the "full cost" responsibility for property owners that are cited for a Code violation involving non-minimal utilities. If, however, the Department determines that some apportionment between the property owner and tenant is required, the Department should (i) retain a full cost responsibility where the Code violation represents 70 percent or more of the household usage and (ii) establish statewide appliance usage standards.

Respectfully Submitted,

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John Cope-Flanagan
Assistant General Counsel
NSTAR Electric & Gas Corporation
800 Boylston Street
Boston, MA 02199
Direct: (617) 424-2103
Fax: (617) 424-2733
john_cope-flanagan@nstaronline.com

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